IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 231 of 1995

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

COMMISSIONER OF INCOME TAX

Versus

SIRHIND STEEL PVT LTD

Appearance:

1. INCOME TAX REFERENCE No. 231 of 1995
MR MANISH R BHATT for Petitioner No. 1
MR RK PATEL for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA
Date of decision: 22/01/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE M.S.SHAH)

In this reference at the instance of the revenue, the following question has been referred for our opinion in respect of assessment years 1983-84 and 1984-85 :-

"Whether the appellate Tribunal is right in law and on facts in holding that the provisions of Section 40A(8) of the I.T. Act would not be applicable in the instant case ?"

2. This reference was made pursuant to this Court's order dated 22.2.1993 in Income-tax Application Nos. 212 and 219 of 1992 under Section 256(2) of the Income-tax Act, 1961. It is not necessary to set out the facts giving rise to this reference because the revenue had invoked the provisions of Section 40A(2) and disallowed a sum of Rs.5,78,461/- paid by way of interest by the assessee-firm to its Director. However, in the alternative, the Assessing Officer had invoked the provisions of Section 40A(8) for disallowing the interest in excess of 15%, if the revenue's case under Section 40A(2) was not upheld.

3. We have heard Mr MR Bhatt, learned standing counsel for the revenue and Mr RK Patel, learned counsel for the respondent-assessee.

4. At the hearing, our intention is invited to the fact that the revenue has already succeeded in invocation of provisions of Section 40A(2) in Income-tax Reference No.204 of 1989. Hence, the present reference arising from the controversy under Section 40A(8) of the Act does not survive.

5. We accordingly decline to answer the question as the reference has become infructuous.

The reference accordingly stands disposed of.

(M.S. Shah, J.)

(A.M. Kapadia, J.)

sundar/-